from continuing business, is rightly reversed by the principal case, on the ground that the covenant no longer attached to the land after the surrender of the premises to the landlord, who had no notice of the restriction. For a discussion of the principles involved, see 24 HARV. L. REV. 574.

SALES — IMPLIED WARRANTIES — REASONABLE FITNESS FOR PARTICULAR PURPOSE. — The defendant bought some cloth of the plaintiff who knew it was to be used for making clothes. The plaintiff sued for the balance of the price which the defendant refused to pay because the cloth was unfit for the intended purpose. *Held*, that there was an implied warranty of the cloth's availability for use in making clothes. *Rhodesia Mfg. Co.* v. *Tombacher*, 129 N. Y. Supp. 420 (Sup. Ct., App. Term). See NOTES, p. 75.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONALITY OF SALE OF TAX LIENS. — A statute authorized the sale of tax liens by a city to private persons, and gave the purchaser the right to enforce these liens by foreclosure proceedings. *Held*, that the statute is constitutional. *Gautier* v. *Ditmar*, 45 N. Y. L. J. 941 (N. Y., App. Div., May, 1911).

As there are practically no specific constitutional restrictions on taxation in New York, the present statute can only be unconstitutional if it is an improper delegation of power. If, like the old French and Roman systems of tax-farming, it included the assessment of taxes, there would probably be such delegation. See 2 COOLEY, TAXATION, 3 ed., 831. But tax-collecting requires little discretion, and the office, in contrast to other public offices, has at times been sold to the highest bidder. *Alvord* v. *Collin*, 20 Pick. (Mass.) 418. In the absence of statute a tax-lien is not transferable. *Hinchman* v. *Morris*, 29 W. Va. 673. But a party who has paid the taxes to protect an interest which he has in the property often enforces a very similar lien. *Farmer* v. *Ward*, 75 N. J. Eq. 33. The purchaser of land at an invalid tax sale may be given such a lien by statute, and in some states the statute recognizes that this lien is actually transferred to him from the state. *Arn* v. *Hoppin*, 25 Kan. 707; IND., ACTS OF 1891, c. XCIX, § 214; *Cole* v. *Gray*, 139 Ind. 396. In fact, in Georgia, since the statute of 1872, tax executions have been sold to the highest bidder, and the constitutionality of the sales has not even been questioned. CODE OF GA., 1911, § 1145.

TAXATION — PROPERTY SUBJECT TO TAXATION — TAXATION OF FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE. — Under a constitutional provision, a Minnesota statute assessed on an express company, organized in New York and engaged in interstate commerce, "a tax of six per cent upon its gross receipts for business done between points within this state, in lieu of all taxes upon its property." *Held*, that this is not a regulation of interstate commerce. *State* v. *United States Express Co.*, 131 N. W. 489 (Minn.).

The principal case presents an example of a common, though unscientific, method of taxing foreign corporations engaged in interstate commerce. Though levied in terms upon an unpermissible object of taxation, it is regarded as, in substance, a tax upon permissible objects. Since no state can regulate interstate commerce, no foreign corporation can be taxed for the privilege of doing interstate business in the state. *Atlantic & Pacific Tel. Co.* v. *Philadelphia*, 190 U. S. 160. But see *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S. 217, 227. So an "occupation tax" or "franchise tax" is not permissible. *Galveston, Harrisburg, & San Antonio Ry. Co.* v. *State of Texas*, 210 U. S. 217. But all the property of the corporation within the state, both tangible and intangible, may properly be taxed by the state. *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185. See BEALE, FOREIGN CORPORATIONS, § 741. The substance and not the form of the tax is material. *Postal Tel. Cable Co.* v. *Adams*, 155 U. S. 688. *Cf. Postal Tel. Cable Co.* v. *City of Richmond*, 99 Va. 102, 108. And this method

of taxing in terms of gross receipts, as a means of reaching the intangible property of the corporation within the state, has frequently been declared constitutional. *Pacific Express Co.* v. *Seibert*, 142 U. S. 339; *Postal Tel. Cable Co.* v. *Adams*, *supra*. But of course the court must be satisfied that it is a *bonâ fide* taxation of property, and not a tax on the gross receipts as such.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — LIABILITY FOR CONSTRAINING PLAINTIFF BY THREAT OF WRONG TO BREAK A CONTRACT. — The defendant, an ice manufacturer, at a time of great scarcity in the market threatened to break a contract to supply ice to the plaintiff, a wholesale and retail dealer, unless the plaintiff would break its contract to supply ice to a third person. The defendant's motive was a desire to sell to this third person. The plaintiff broke the contract with the third person, and the latter recovered damages from it. *Held*, that the plaintiff has a cause of action against the defendant. *Sumwalt Ice Co.* v. *Knickerbocker Ice Co.*, 80 Atl. 48 (Md.).

By the weight of authority, the making of a contract confers upon each party thereto a certain right *in rem*, so that either party has a right of action against a third person who without justification procures a breach of the contract by the other party. *Lumley* v. *Gye*, 2 E. & B. 216; *Heath* v. *American Book Co.*, 97 Fed. 533. There would seem to be no logical reason why a contracting party's rights are not equally infringed when he himself is coerced to break the contract. *Lynch* v. *Quincy*, 11 HARV. L. REV. 469. Although in the principal case the plaintiff's cause of action must arise in a sense from his own wrong, in many cases the parties have been held not to be *in pari delicto* where they were not in equal degrees of guilt or where one party had exercised undue pressure upon the other. *Gray* v. *Boston Gas Light Co.*, 114 Mass. 149; *County of La Salle* v. *Simmons*, 10 Ill. 513. Since the court could find that "the act of the plaintiff was not voluntary," the case may be regarded as a novel but logical and justifiable extension of the doctrine of liability for wrongful interference with the contract relation.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION — PRIVILEGE OF CORPORATE OFFICER ORDERED TO PRODUCE INCRIMINATING BOOKS. — In an investigation by a federal grand jury, a *subpœna duces tecum* was issued to a corporation ordering it to produce certain books. These books were kept by the president, who refused to produce them on the ground that they would incriminate him personally. *Held*, that the constitutional privilege against self-incrimination does not justify such a refusal. *Wilson* v. *United States*, 31 Sup. Ct. 538; *Dreier* v. *United States*, *id.* 550.

There are authorities against these cases. *Ex parte Chapman*, 153 Fed. 371; *Rex* v. *Cornelius*, 2 Str. 1210; *Rex* v. *Purnell*, 1 W. Bl. 36. They seem, however, to be correctly decided. It is well settled that the constitutional right not to be a witness against oneself may be waived by testifying on the subject matter involved. *Fitzpatrick* v. *United States*, 178 U. S. 304; *State* v. *Nichols*, 29 Minn. 357. So one who keeps public or quasi-public records required by law waives his privilege against self-incrimination to such an extent that he may not lawfully refuse to produce them. *Bradshaw* v. *Murphy*, 7 C. & P. 612; *People* v. *Coombs*, 158 N. Y. 532; *State* v. *Donovan*, 10 N. D. 203. The right of the state to create such situations, demanding by implication a waiver of this constitutional protection, has been upheld as constitutional within wide limits. *State* v. *Davis*, 68 W. Va. 142. But *cf. People ex rel. Ferguson* v. *Reardon*, 197 N. Y. 236; *People* v. *Rosenheimer*, 128 N. Y. Supp. 1093. By virtue of the visitatorial power reserved to the state and federal government, a corporation has no privilege against self-incrimination, and, as far as the corporate entity itself is concerned, must produce evidence against itself when so ordered.